

STATE OF MICHIGAN
COURT OF APPEALS

In re HUFFMAN, Minors.

UNPUBLISHED
December 8, 2015

No. 326538
Cheboygan Circuit Court
Family Division
LC No. 13-008335-NA

Before: SAAD, P.J., and STEPHENS and O'BRIEN, JJ.

PER CURIAM.

Respondent-mother, V. Williams,¹ (respondent) appeals as of right the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

Respondent's parents suffered from drug and alcohol problems, and respondent was placed in foster care at a young age, but ultimately adopted by her grandparents. Respondent began using marijuana at age seven. Respondent was 17-years old when she gave birth to MFH on June 13, 2012. After the birth, respondent kept falling asleep while holding the baby, and blood tests were ordered for respondent and MFH that revealed the presence of marijuana. Respondent explained that she smoked marijuana earlier in her pregnancy, and it must have remained in her system throughout the pregnancy. Petitioner received a referral and filed a petition, but the trial court allowed MFH to remain in respondent's care provided she cooperate with services, including drug and alcohol testing. Respondent gave birth to CMH on August 19, 2013, and this baby also tested positive for the drug. Ultimately, a previous agreement to delay disposition was revoked, and the minor children were removed from respondent's care and placed in a foster home.

Respondent's compliance with the case service plan was poor. She did not maintain appropriate housing and employment, did not provide verification of attendance at substance abuse support groups, did not attend all of the random drugs screens, tested positive for marijuana in many drug screens, and did not consistently attend the supervised parenting time.

¹ The biological father was incarcerated after pleading guilty to third-degree criminal sexual conduct, MCL 750.520d. He voluntarily consented to the termination of his parental rights to the minor children, and he is not a party to this appeal.

Respondent also exhibited her anger at the case workers and threatened to burn their building down with everyone in it. She engaged in domestic violence with the minor children's father. Prior to the hearing on the supplemental petition seeking to terminate her parental rights, respondent secured an apartment, her driver's license, a car, and employment. However, respondent did not submit a budget and indicate that she could afford and maintain a household as well as provide for the minor children.

Respondent reported that she used marijuana to relieve stress and anxiety and claimed that it had no bearing on her capability as a parent. In fact, she opined that it made her quicker and smarter. Instead of pursuing prescription medication to alleviate her anxiety, respondent² went to a doctor where "everybody who I know who has a medical marijuana card gets their card from," met with Dr. Larry Shapiro for one hour, and received a "prescription" for medical marijuana to treat her post-traumatic stress disorder (PTSD). Petitioner was unable to obtain Dr. Shapiro's presence at the hearing to testify. However, petitioner's witnesses concluded that there were other non-addictive medications available for treatment of stress and anxiety. Respondent advised her drug and alcohol counselor of her recent receipt of a medical marijuana card. He opined that an individual with a medical marijuana card generally used it as a justification, did not have an incentive to change, and it was not a harmless drug. Dr. Timothy Strauss, the evaluating psychologist, disagreed with respondent's conclusion that marijuana did not impact her parenting. Rather, he concluded that chronic marijuana use, particularly for respondent who began smoking at such a young age, led to impairment in long-term and working memory as well as lower intelligence. Additionally, Dr. Strauss opined that dispensary medical marijuana was far more potent than a street purchase, and therefore, other treatment options should be explored. The guardian ad litem supported petitioner's request for termination of parental rights, noting that MFH was terrified of males and CMH did not exhibit "normal" behaviors when the children were initially brought into foster care.

The trial court found that clear and convincing evidence was presented to satisfy the statutory grounds for termination and that termination was in the children's best interests. The trial court noted that for the majority of the time that the case was pending, respondent's marijuana use was illegal because she had not obtained a card and that there was evidence that respondent's use impaired her ability to parent her children. It expressly rejected respondent's testimony that her marijuana use had no impact on parenting, but rather found that the expert testimony offered by petitioner was credible. The trial court delineated respondent's inability to maintain a residence and employment, the failure to consider alternative non-addictive treatments, the failure to attend visitation and to progress to unsupervised visits, the failure to attend all of the random drug screens and the number of positive screens, the failure to attend individual and substance abuse counseling, and the failure to cooperate and communicate with the workers. Respondent was given credit for her recent attempts to secure housing and employment, but the trial court concluded that it was "too little, too late" in light of the ages of the children and their needs.

² At the termination of parental rights hearing, respondent testified that her "problems" consisted of reacting before listening, timeliness, and "a dependency with marijuana."

On appeal, respondent solely contends that the trial court erred by terminating respondent's parental rights as a valid medical marijuana card holder without rendering a determination regarding whether the children were subject to unreasonable danger. We disagree. "To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). "We review for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence." *Id.*; see also MCR 3.977(K). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Laster*, 303 Mich App 485, 491; 845 NW2d 540 (2013) (citation omitted). Once a statutory ground for termination has been established, the trial court must determine whether the petitioner has proven by a preponderance of the evidence that termination is in the children's best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App at 90. This Court reviews de novo the trial court's selection, interpretation, and application of the relevant statutory provisions. *In re Gonzalez/Martinez Minors*, ___ Mich App ___, ___; ___ NW2d ___ (2015) (Docket No. 324168); slip op at 2. A statute must be construed in light of the purpose of the act and the best evidence of legislative intent is the plain language of the statute. *In re MKK*, 286 Mich App 546, 556; 781 NW2d 132 (2009).

Michigan's Medical Marihuana Act (MMMA), MCL 333.26371 *et seq.*, addresses termination of parental rights when the parent holds a valid medical marijuana card, and provides, in relevant part:

(c) A person shall not be denied custody or visitation of a minor for acting, in accordance with this act, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated.
[MCL 333.26424(c).]

The record does not reflect that the trial court denied respondent custody or visitation because she obtained a medical marijuana card. Thus, respondent's parental rights were not terminated because of her actions in accordance with the MMMA. MCL 333.26424(c); *In re MKK*, 286 Mich App at 556. Rather, the court noted that respondent had a history of marijuana use from the age of seven, but she rejected other alternative treatment options. Respondent continued to use marijuana despite court orders to the contrary and waited over a year to fulfill her representation that she would pursue a card. Moreover, the trial court questioned the validity of the diagnosis in light of the inability to obtain Dr. Shapiro's presence at trial. It was noted that, even if the court assumed the validity of the medical marijuana card, respondent failed to appear for her random drug screens for the court to determine whether the amount of marijuana used was consistent with need or constituted abuse. The trial court did not cite to respondent's acquisition of the card, but her conduct prior to securing the card and the question of the legitimacy of the need for the card in light of her actions and the opinions of her counselors.

Additionally, it is readily apparent from the record evidence that the trial court did not solely consider respondent's acquisition of a medical marijuana card as the reason for termination of her parental rights, but the utter failure to cooperate with and complete the terms of the case service plan. Irrespective of her marijuana use, respondent had a history of an inability to maintain housing and employment, did not cooperate with case workers, and did not

address her anger issues. Although the trial court acknowledged that respondent had a difficult upbringing and recently made efforts to obtain housing, employment, and transportation, it found that these efforts were “too little, too late” in light of the age of the children and the duration of the case. Indeed, respondent had found housing in the past, but seemingly lacked the ability to maintain a budget and sustain necessities. Respondent’s challenge is not supported by the record.

For purposes of completeness, we conclude that there was clear and convincing evidence to support termination of respondent’s parental rights, MCL 712A.19b(3)(c)(i), and there was a preponderance of the evidence to demonstrate that termination was in the children’s best interests. *In re Moss*, 301 Mich App at 80, 90. Irrespective of respondent’s marijuana use, she failed to demonstrate that she could maintain employment and housing³ and the children deserved permanency.

Affirmed.

/s/ Henry William Saad
/s/ Cynthia D. Stephens
/s/ Colleen A. O’Brien

³ While the case was pending, respondent was repeatedly evicted from her housing. Respondent failed to present a budget, and her earnings were not commensurate with her expenses. She also was involved in three different relationships while the case was pending, and her last relationship was with an individual with multiple criminal convictions. Although respondent asserted that she was not living with this individual and claimed that she removed him from the title on her vehicle, the trial court did not give credence to this testimony.